

**Town of Georgetown -- Appeal
Department Order #13-09, Mandatory Shoreland Zoning Act**

Excerpts from the Department's Record

- **Request for Remand – Letter from D. Lawson-Stopps (June 26, 2009)**
 - **Town of Georgetown Supplemental Data (September 14, 2009)**

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June 26, 2009

Cynthia S. Bertocci
Board of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Town of Georgetown

Dear Ms. Bertocci:

Officials of Georgetown, DEP, and the legislature met on June 3, 2009 to discuss the issues in Georgetown's recently filed appeal. It is apparent from that meeting that all parties recognize avenues leading to potential resolution of the issues.

On the basis of likely progress and to avoid unnecessary use of the Board's time, we ask that the Board remand the matter to the DEP for further work. Nancy Macirowsky, Esq., Assistant Attorney General representing the DEP in this matter concurs in this request.

Thank you for your prompt attention to this request. If you have questions please do not hesitate to call.

Very truly yours,



Donald Lawson-Stopps

DLS/slg

cc: Donald Ludgin
Nancy Macirowski, Esq.
Stuart Carlisle
John Evans



TOWN OF GEORGETOWN

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14 September, 2009

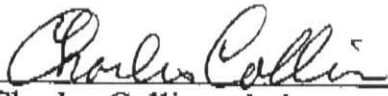
Mike Morse
Maine Department of Environmental Protection
312 Canco Road
Portland, Maine 04103

Dear Mr. Morse,

Enclosed with this letter is the additional data in support of Georgetown's appeal of the DEP Order #13-09, which was required to be submitted on or before September 21st. in accordance with the terms of the temporary remand of our appeal action. The document sets out in detail the existing conditions pertaining to each of the fourteen lots as well as Georgetown's rationale for proposed zoning assignments.

We are certain that the information will support our position clearly and we hope this will resolve the issue fairly and finally and look forward to having your response as soon as you are able to do so. Thank you for your consideration.

Signed on behalf of the Georgetown Board of Selectman,


Charles Collins, chairman

CC: Cynthia Bertocci, Board of Environmental Protection
Nancy Macirowski, Assistant Attorney General

Supplemental Data

Supporting Georgetown's Conclusion That 14 Lots Identified By MeDEP Should Be Zoned As Limited Residential

September 9, 2009

Statement of Purpose:

This supplemental data provides augmented documentation regarding the fourteen lots in question in Georgetown's June 3, 2009 appeal exhibit G.

Background:

On March 12, 2009, the Town of Georgetown submitted to the Commissioner of Maine Department of Environmental Protection (MeDEP) for approval, a Shoreland Zoning Ordinance (SZO) and zoning maps, properly adopted by the Town on March 11, 2009. In a draft submittal, dated April 7, 2009, the MeDEP conditionally approved and partially denied the Town's SZO requiring that the Town delete its definition of "Developed Area" and including a list of 14 lots to be rezoned as Resource Protection (RP). On April 28, 2009, the DEP submitted a final ruling with the same findings, conclusions and list of 14 lots.

DEP Identified Lots:

R2 L11	R2 L2	R3 L7-23	R3 L7-24	R3 L7-17	R4 L26-9
R6 L7E	R8 L1-6	R8 L1-5	R8 L1-4	R8 L1-3	R8 L1-2
R8 L1-1	R6 L49				

On June 3, 2009, after consultation with the Georgetown Selectmen and the Town's attorney, a formal appeal was submitted to the Commissioner of DEP.

All of the 14 lots identified by DEP, meet Georgetown's definition of "Developed Area". This definition was approved by DEP when it approved Georgetown's 1993 SZO. In fact, there is no difference between the 1993 SZO and the 2009 SZO definition. DEP provided no justification for its change of position regarding the Town's definition.

Additional Documentation or Special Conditions:

In its Findings of Facts, the DEP stated "The Town has not documented any special local conditions and submitted them to the Commissioner of the Department for review that supports the elimination of the Resource Protection District in the affected areas." The purpose of this submission is to provide this information regarding the 14 lots in question. If the Town is unable to use its definition of Developed Area, the rationale below and the table of data, sorted by map & lot number, provide additional information in support of Georgetown's position that the 14 lots identified by DEP, should remain zoned as Limited Residential (LR).

Georgetown's Rationale for zoning DEP's identified 14 lots as Limited Residential:

1. The MeDEP's Guidelines For Municipal Shoreland Zoning Ordinances (the Guidelines) provide no definition of "developed". However, the closest definition the Guidelines do provide is for "development" – "a change in land use involving alteration of the land, water or vegetation, or the addition or alternation of structures or other construction not naturally occurring." For the 11 lots with existing structures, none of the construction occurred naturally. Thus each of these lots meets the Guidelines definition of "development". DEP provided no factual basis for why these lots do not meet this definition and why they should not be excluded from the Resource Protection district.

Furthermore, all of the 14 lots whether within approved subdivisions or not, were subject to:

- (a) a change of land use – undeveloped or natural changed to developed land tracts;
- (b) alterations of land, water or vegetation – construction of infrastructures (roadways, driveways, drainage systems, utilities) and removal of vegetation, and
- (c) neither of the above items were naturally occurring

2. Section 13A of the Guidelines states that "Resource Protection District...except that areas which are currently developed...need not be included within the Resource Protection District". If existing residential subdivisions are not currently developed, then what is currently developed? The table below provides those lots that are within an existing residential subdivision, the date the Planning Board approved those subdivisions, and the year when any structure was approved (building permit issued). Section 13B of the Guidelines states that "Limited Residential District includes those areas suitable for residential or recreational development". Again, if existing residential subdivisions or individually developed lots are not suitable for residential development, then what is suitable residential development? Georgetown zoned these lots as LR because they may be excluded from RP based on Section 13A and because the subdivision or individual lots are existing and therefore "suitable for residential development per Section 13B.

3. DEP's identification and proposed rezoning of individual lots to RP raises an issue of

inequitable treatment of properties. DEP has not provided any criteria or rationale in proposing different zoning of the 14 lots identified, compared to the other abutting lots not covered by the DEP order and approved by DEP as LR.

Table of Individual Lots with Supporting Documentation

Lot 1 (Non-Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
1 & 2	R2 L2	Bragg	3.2 Ac	1980	N/A

Abutting Properties: R2 L6 is RP
R2 L1 is RP

Supporting Documentation - The house on this lot was built in 1980 prior to the establishment of the 250-foot setback now required in districts zoned RP. Although the house was built within the SLZ, it is 85 ft. from forested wetland contiguous with the adjacent salt marsh. The part of the lot in the SLZ is approximately 1 1/4 acre. It is reasonable to place all of this lot in LR since allowing for the minimal 3/4 acre building envelope would leave only about a half an acre in RP.

Lot 2 (Non-Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
1 & 2	R2 L11	Freeman Family Trust	27Ac	1977	N/A

Abutting Properties: R2 L11A is RP,
R2 L11B is RP,
R2 L11D is RP
R2 L12A is LR

Supporting Documentation - The portions of this lot marked as RP on the Town's zoning map were recently conveyed to the Nature Conservancy to be placed in permanent conservation. The boundaries shown on the Zoning Map have not been updated to reflect this conveyance. Currently all of the land to the north and the southeast of the presently configured lot are in RP. Significant development as defined in the Guidelines occurred on this lot when the house was built in 1977 and abandoned farm land was reclaimed for pasture and gardens. Of the approximately 27 acres remaining in this lot, about 13 acres as described in the deed are tidal marsh and therefore not technically in the Shoreland Zone. 8 or 9 acres are developed and 5 or 6 acres are in an undeveloped state. Not all of this

undeveloped land lies within the SLZ. All current SZO areas of this lot should be designated LR. The owner has provided the following two documents: Exhibits A and B, located at the end of this document.

Lot 3 (Bowman's Landing – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
2	R3 L7-17	Timpson	7.3 Ac	No Building	1/20/1988

Abutting Properties: R3 L16 is LR
R3 L31 is LR

Supporting Documentation - This is a lot with no structure within an existing approved subdivision. The properties on either side of this property are LR. One has two structures and the other (L31) is the Bowmans Landing Home Owners Association (BLHA) Common Area with covenants allowing only recreational uses and precluding future development. DEP's identification of this lot to be rezoned as RP would be inconsistent with DEP's approved LR zoning for the abutting lots. It could be argued that DEP is mandating small areas of land or sections (lots) in existing neighborhoods that were singled out and placed in a different zone from that of neighboring properties, without establishing any criteria. Bowman's Landing Homeowners Association covenants do not allow this lot or any others to be further subdivided. This lot, R3 7-17, should be zoned as LR consistent with Guidelines Section 13A & B rationale noted above.

Lot 4 (Bowman's Landing – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
2	R3 L7-23	Helm	6.5 Ac	2004	1/20/1988

Abutting Properties: R3 L24A is RP
R3 L22 is LR

Supporting Documentation - This is a developed lot within an existing approved subdivision. The existing house is located 75 ft from the edge of the marsh. BLHA covenants do not allow this lot or any others to be further subdivided. The area to the north of this lot is zoned as RP and is part of Lower Kennebec Land Trust conservation lands. However, this lot and the properties to the south are part of an existing approved subdivision and should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above. The owners have stated that they bought this lot in 2004 based on Georgetown's 1993 SZO and the BLHA covenants. Georgetown approved building the house with a 75 foot setback from the edge of the marsh consistent with the 1993 SZO

(approved by DEP) setback requirements for principal and accessory structures in LR zoned areas.

Lot 5 (Bowman's Landing – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
2	R3 L7-24	Smith	5.1 Ac	1999	1/20/1988

Abutting Properties: N/A

Supporting Documentation - This lot was erroneously identified by DEP. Georgetown submitted documentation by e-mail to DEP demonstrating that lot 24 is beyond the 250 ft SZO boundary. Georgetown advised DEP that there was an error with both the tax maps and the SZO maps causing a failure to distinguish separate property lines between lots 24 and 22. Georgetown is assuming that DEP intended to identify Lot 22. However, DEP has yet to verify that Lot 22 was their intended lot.

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
2	R3 L7-22	Brown-Anderson	5.1 Ac	No Building	1/20/1988

Abutting Properties: R3 L23 is LR
R3 L21 is LR

Supporting Documentation - This is a lot with no structure within an existing approved subdivision. The property to the south of this lot was approved by DEP as LR. However, DEP is now proposing to rezone the property to the north as RP. (See R3 L7-23, Helm above). DEP's identification of this lot to be rezoned as RP would be inconsistent with DEP's approved LR zoning for the abutting lots. It could be argued that DEP is mandating small areas of land or sections (lots) in existing neighborhoods that were singled out and placed in a different zone from that of neighboring properties, without establishing any criteria. Bowman's Landing Homeowners Association covenants do not allow this lot or any others to be further subdivided. The majority of this lot is within the 250 ft SZO boundary and any construction would need to be completed consistent with Georgetown's SZO Section 15. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above. The owners have acknowledged that they bought this lot in 2000 with the expectation it was a buildable lot, based on Georgetown's 1993 SZO and the BLHA covenants.

Lot 6 (Beaver Valley – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
2	R4 L26-9B	Zarougian	5.5 Ac	1997	9/1973

Abutting Properties: R4 L26-9A is LR,
R4 L26-8 is LR.

Supporting Documentation – DEP identified R4 Lot 26-9 to be rezoned as RP. It appears that the Georgetown tax maps and SZO maps are not labeled correctly and they should show this as Lot 26-9B. The abutting properties are LR. DEP's identification of this lot to be rezoned as RP would be inconsistent with DEP's approved LR zoning for the abutting lots. It could be argued that DEP is mandating small areas of land or sections (lots) in existing neighborhoods that were singled out and placed in a different zone from that of neighboring properties, without establishing any criteria.

Lot 7 (Non-Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3	R6 7E	Tuttle	21.5 Ac	1990	N/A

Abutting Properties: R6 L4 is RP
R6 L7-D is RP

Supporting Documentation – The SZO portion of this lot is greater than 2 acres. The lots on either side of this are now in RP. During development of Georgetown's SZO, the Planning Board had two options. Apply the definition of "developed area" and zone the entire lot as LR or apply a working policy adopted by the Planning Board on 9/3/08, whereby, the Planning Board could have found out exactly where the house was and zoned the developed area (2 acres minimum building lot) surrounding the house as LR and zoned the remainder of the lot as RP. Georgetown decided to apply the "developed area" definition as being consistent throughout this process. The house on this lot was built in 1990, prior to the establishment of the 250-foot setback now required in districts zoned RP.

Lot 8 (Non-Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
4	R6 L49	Epstein	43.0 Ac	1880 1999 2001	N/A N/A N/A

Abutting Properties: U2 L2 is RP

R6 L47 is LR

R6 L46C is LR & RP

R6 L46D is LR & RP

R6 L35B is LR & RP

Supporting Documentation – This 43 acre lot consists of an 1880 original farmhouse, a newer house, built in 1999 and a garage in 2001. The 1999 house and the 2001 garage are within the 250 ft SZO boundary. The Board zoned the southern half of the lot in RP and the northern half (1999 and 2001 structures) in LR

Lot 9 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-1	Wain	21.98 Ac	1997	12/21/1988

Abutting Properties: U5 L1 is RP

R8 L1-2 is LR

Supporting Documentation: This lot cannot be further subdivided because of covenants placed in the deeds at the time of subdivision approval. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above.

Lot 10 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-2	Browning	13.28 Ac	1997	12/21/1988

Abutting Properties: R8 L1-1 is LR

R8 L1-3 is LR

Supporting Documentation: This lot cannot be further subdivided because of covenants placed in the deeds at the time of subdivision approval. This lot should be zoned as LR consistent with Guidelines Section 13A & B rationale noted above. The existing house is

located 75 ft from the edge of the Little River upland edge and therefore is within the 250 ft SZO boundary. Georgetown approved building the house with a 75 foot setback from the edge of the Little River consistent with the 1993 SZO (approved by DEP) setback requirements for principal and accessory structures in LR zoned areas.

page seven of eleven

Lot 11 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-3	Browning	17.26 Ac	No Bldg.	12/21/1988

Abutting Properties: R8 L1-2 is LR
R8 L1-4 is LR

Supporting Documentation: - This lot has no significant structure on it. the owners have acknowledged that they bought this lot in 1997 with the expectation that it was a buildable lot based on Georgetown's 1993 SZO and the Little River Farm covenants. This lot can not be further subdivided because of covenants placed in the deeds at the time of subdivision approval. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above.

Lot 12 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-3	Unger	11.9 Ac	1990	12/21/1988

Abutting Properties: R8 L1-3 is LR
R8 L1-5 is LR

Supporting Documentation: This lot has no significant structure on it. The owners built an 8ft x 10ft structure (shed) to be eligible for the original developer's connection and installation of electric power to each lot. The structure is located approximately 167 ft from the upland edge of the Little River and therefore it is within the 250 ft SZO boundary. The owners have acknowledged that they bought this lot with the expectation it was a buildable lot, based on the Little River Farm covenants. This lot cannot be further subdivided because of covenants placed in the deeds at the time of subdivision. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above.

page eight of eleven

Lot 13 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-5	Unger	10.47 Ac	1990	12/21/1988

Abutting Properties: R8 L1-4 is LR

R8 L1-6 is LR

Supporting Documentation: This lot has no significant structure on it. The owners built an 8ft x 10ft structure (shed) to be eligible for original developer's connection and installation of electric power to each lot. The structure is located approximately 199 ft from the upland edge of the Little River and is therefore within the 250 ft SZO boundary. The owners have acknowledged that they bought this lot with the expectation it was a buildable lot, based on the Little River Farm covenants. This lot cannot be further subdivided because of covenants placed in the deeds at the time of subdivision. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above.

Lot 14 (Little River Farm – Existing Subdivision)

<u>SZO Map</u>	<u>Map/Lot</u>	<u>Owner's Name</u>	<u>Lot Size</u>	<u>Year Structure Built</u>	<u>Subdivision Approved By Planning Bd</u>
3 & 4	R8 L1-6	Paul	10.0 Ac	1990	12/21/1988

Abutting Properties: R8 L1-5 is LR

R8 L1-7 is RP

Supporting Documentation: This lot cannot be further subdivided because of covenants placed in the deeds at the time of subdivision approval. This lot should be zoned as LR consistent with the Guidelines Section 13A & B rationale noted above. The existing house is located 75 ft from the edge of the Little River upland edge and therefore is within the 250 ft SZO boundary. It was built prior to the establishment of the 250 ft setback requirement in RP districts.

Source of Data:

SZO Maps 3/11/09

Lot Size from the Georgetown Tax Records

Year Structure Built from the Georgetown Building Permit Files

Subdivision Approved from the Georgetown Subdivision Plan Files

Abutting Property Zoning from SZO Maps (3/11/09)

RT 100A



